



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

AMENDMENT AND REVISION OF STATE CONSTITUTIONS IN MICHIGAN AND THE MIDDLE WEST

BY PROF. JOHN A. FAIRLIE
University of Michigan

In the study and discussion of American political ideas and methods the emphasis has been laid on the powers and activities of the National Government, and far too little attention has been given to the developments within the States. The State Constitutions of the revolutionary period have been examined, but mainly for the purpose of tracing the development of the Constitution of the United States. Almost nothing has been done to analyze the fundamental changes in the American political system by the revision and amendment of State constitutions in the two or three decades before 1850. The reconstruction period in the Southern States has been studied mainly with reference to the questions of secession and slavery; and other important changes made during that period, both in Southern and Northern States, have been practically neglected. And the full significance of alterations in State Constitutions during the past decade or so are far from being thoroughly appreciated.

It is the purpose of this paper to examine briefly the more recent changes in the Constitutions of the States of the Middle West, including the States of the old Northwest territory and the adjacent states west of the Mississippi river. At first sight, such a subject seems to offer comparatively little material for study. With the exception of Michigan, whose revised Constitution goes into effect with the beginning of 1909, none of these states have made a general revision of its Constitution since 1870; most of the constitutions date from before the Civil War, and a number from the middle of the last century. But the recent Michigan revision is of no little importance in itself; and quite a number of other states have been actively amending their constitutions during the past decade; while in several states of this group there is a more or less active demand for a general revision of the State Constitution, on account of the difficulty of amending the present documents.

We may begin with the states where least has been done. These are the continuous group running west from Ohio, including Indiana, Illinois and Iowa. In these states the process of amending the constitution is comparatively difficult. Proposed amendments must pass two legislatures or must be adopted by a majority of all those voting at a general election. In Indiana both conditions are required; and in Illinois there are additional restrictions. These conditions explain, at least in part, why no amendment has been adopted in Indiana since 1881; and only two each in Illinois and Iowa during the past decade. In Ohio a number (9) of amendments have been proposed since 1900. Five of these were adopted by the aid of an act under which, if a political party endorsed a proposed amendment at the state convention, a straight party vote was counted for the amendment. The most important amendments adopted by this device were those granting the veto power to the Governor, and changing the dates of elections so as to separate state and city elections. Amendments not so endorsed have uniformly failed to receive the required majority of all voting at the elections: The act providing for this method was repealed at the last session of the legislature; and several amendments submitted in November, 1908, were not adopted.

Both in Ohio and Indiana there is a considerable demand for a convention to revise the state constitution; and some action in this direction may be looked for before many years. In Illinois there is some sentiment in favor of a general revision; but as yet this shows no great signs of strength. In Iowa the question of calling a convention is submitted every ten years; and has been regularly defeated.

In the states to the north of these just noted, and also in Missouri, amendments to the State Constitutions have been frequently proposed during the past ten years, and a large proportion of these have been adopted. In Michigan no less than eighty amendments have been proposed by the legislature since the Constitution of 1850 was adopted, one-half of which have been adopted. During the past decade fifteen amendments have been submitted, of which eleven were adopted. In Wisconsin, about a dozen amendments have been proposed in ten years, and half of them adopted. In Minnesota more than a score of amendments have been submitted since 1895. Eleven of these, submitted in 1896 and 1898, were adopted by a majority of those voting on each question. But in 1898 one of the amendments provided that a majority of those voting at the election

should be necessary to adopt further amendments; and most of the amendments submitted since then have failed to receive this vote. North and South Dakota, whose constitutions date only from 1889, have also submitted and adopted a goodly number of amendments.

But the state in the Middle West which has been most active in adopting amendments to its Constitution has been Missouri. Since 1899 no less than thirty amendments have been submitted. All but one of the first fifteen (submitted in 1900 and 1902) were adopted, but in the last few years the larger proportion have failed. Of the eight amendments voted on in November, 1908, only two were adopted. The numerous amendments, however, do not seem to have satisfied the call for modifications of the constitution, and there is a considerable demand for a convention in Missouri to undertake a general revision.

The number of constitutional amendments proposed and adopted in these states is itself significant, as illustrating a widespread tendency towards alterations in the fundamental law. Since constitutional amendments in all of these states must be adopted by popular vote the large number of amendments also indicates a markedly increasing use of the popular referendum, even in states where the system of direct legislation has not been definitely established.

As to the substantive character of the constitutional changes, many of the amendments deal with relatively minor changes of interest mainly within the state concerned, and of comparatively little general significance. But some of the amendments involve changes important in themselves, and part of a more general movement. Several amendments adopted, and others proposed but not adopted, deal with changes in the constitutional provisions in regard to taxation. In Michigan the former system of levying small specific taxes on the gross receipts of railroads and other public service corporations has been replaced by levying the average rate of taxation on an ad valorem valuation assessed by a state board. In Minnesota an amendment adopted in 1895 provided for the taxation of certain classes of corporations; and another amendment voted on in 1906, but still in litigation, provided for removing restrictions on the taxing power of the legislature. In Wisconsin an amendment just adopted authorizes a graduated income tax in that state. In Missouri and Ohio, among the proposed amendments which have failed of adoption, have been those providing for changes in the methods of taxation.

One of the Minnesota amendments adopted in 1896 provided for Home Rule charters for cities,—joining a movement which had started in Missouri nearly twenty years before, and has made considerable progress in the mountain and Pacific states.

One of the Missouri amendments adopted in 1908 provides for the system of direct legislation through the initiative and referendum,—the first state of the Middle West to adopt this system from the states further West. In Ohio an amendment providing for the initiative and referendum seems to have failed for lack of a majority of the votes cast at the election.

These changes, with the grant of the veto power to the Governor in Ohio, constitute the most important changes in the states of the Middle West by the adoption of amendments to the existing constitution. As will be seen, most of these questions were also considered in the convention which framed the general revision of the Michigan Constitution; and they are likely to be further discussed in other states of the Middle West and the other sections of the United States.

THE MICHIGAN REVISION

Of much greater significance than the various constitutional amendments adopted from time to time is the general revision of the Constitution of Michigan, framed in the winter of 1907–1908 and adopted in November of this year. As already noted, Michigan has frequently amended the Constitution of 1850, no less than forty amendments having been adopted. Yet there have been a number of attempts to secure a general revision. Two revisions were drafted, one in 1867 and one in 1873, only to fail of ratification. Since the latter date the question of calling a constitutional convention has been submitted half a dozen times, but did not receive the required majority of votes until 1906.

The convention was elected in the summer of 1907, and was in session for four months, from October 22, 1907, to February 21, 1908. In its membership, organization and methods of procedure it was a notable body, and an excellent example of an American deliberative assembly at its best. Without entering into details, it may be said that it was a body of serious and intelligent men, with a fair proportion of members of a high order of ability. The methods of business insured thorough discussion of the numerous proposals, both in com-

mittee and in the convention as a whole, with no attempt at irrelevant debate for purposes of delay. Special attention was given to the language and arrangement, through the committee on arrangement and phraseology. There were wide differences of opinion and earnest debates; but on the critical questions the final result was at least acceptable to all the delegates, and at the final vote on the complete revision not a single negative vote was recorded in the convention.

In view of the failure of previous attempts at a general revision, it was gratifying to the convention to have its work ratified by the electors by a very decisive vote (244,000 to 130,000). This result also speaks well for the outcome of the convention's deliberations.

The revised Constitution of Michigan may fairly be called progressive. It includes a considerable number of important changes, some of which may seem radical in the more conservative states. But, as compared with provisions in the constitutions of some states beyond the Mississippi, such as Oklahoma and Oregon, the new Michigan instrument shows moderation. There has been no startling revolution. The fundamental principles remain as before. Yet the revision contains many alterations to meet the changed conditions that have developed since the Constitution of 1850 was framed for a young and frontier community.

The most important changes have been in enlarging the constitutional powers of local government, especially for cities and villages. When the Constitution of 1850 was framed, Michigan had but little urban population; and the legislature was given almost a free hand in dealing with municipal government. With the rapid growth of cities there developed an enormous mass of detailed special legislation, passed without consideration, yet consuming the time of the legislature; while at times the larger cities have suffered both from "ripper legislation," which they did not want, and from failure to secure measures they did want and need.

In the revised constitution the legislature is to provide for the "incorporation" of cities and villages and to limit their rate of taxation and restrict their power of borrowing money by general laws, while the debates make clear that classification of cities was not to be permitted. Subject to the constitution and general laws, each city and village has power to frame, adopt and amend its charter and to pass all laws and ordinances relating to its municipal concerns. More specifically power is granted to maintain parks, hospitals and

all works which involve the public health and safety; and—on a three-fifths vote of the electors—to acquire and maintain public utilities for supplying water, light, heat, power and transportation. Further, the consent of the local authorities is required for the use of highways or streets for public utilities, and all franchises are made subject to a referendum.

The provisions in regard to home rule charters do not prescribe the detailed methods, as is done in the constitutions of some states west of the Mississippi; and the powers of cities and villages are limited to some extent by provisions in the constitution and by restrictions which may be imposed by general law. But the provisions in the Michigan Constitution, it is believed, establish the principle of local self-government for cities and villages on a broad and adequate foundation for constructive legislation. The limitations provided are reasonable, and may be said to make the autonomy of the cities and villages in their local affairs the more secure. It is perhaps not too much to say that these sections of the Michigan Constitution are the best, as they are the latest constitutional provisions thus far to be found in any state.

The most fundamental change proposed in the Michigan convention, and the question most vigorously contested, was that for the initiative and referendum. A considerable number of delegates favored the complete program of direct legislation; but the active contest centered around a proposal for the popular initiative for constitutional amendments. After four days of debate, and a number of conferences, a modified provision was adopted. Under this, constitutional amendments may be proposed by petition of twenty per cent of the vote cast for secretary of state at the preceding election, the method of signing petitions being regulated to insure reliability; and amendments so proposed must be submitted to the electors for adoption, unless disapproved by a majority of all the members elected to both houses of the legislature, in joint session. Provision is also made for voting on alternative proposals; while amendments may also be proposed, as formerly, by a two-thirds vote of each house of the legislature.

While these provisions do not entirely meet the wishes of the pronounced advocates of direct legislation, they are a substantial recognition of the demand for a larger direct popular influence in securing constitutional changes in the future. Proposed amendments for which there is a strong popular demand cannot be prevented by

a minority of one branch of the legislature, nor by the policy of inaction. At the same time the possible veto of the legislature offers a check in the case of unjust proposals which might receive the required number of petitioners and provides for discussion and redrafting a proposed amendment to meet objections to the particular form in which it may be first offered.

The revised Michigan Constitution further follows the New York Constitution of 1894 in providing more definitely for future conventions. When authorized by popular vote, the convention will be elected and empowered to act without waiting for legislative action and will thus be free from any possible attempt at legislative control.

Provision is also made authorizing a popular referendum on any act referred by the legislature to the people.

In addition to the limitations on the legislature involved in the provisions already noted, other provisions are intended to restrict closely the enactment of special laws and to secure a larger measure of publicity and fuller consideration for all legislation. No special laws may be passed where a general law can be made applicable—the latter question to be determined by the courts—and in any case all special acts are made subject to the approval of the electors in the district to be affected. No bill may be passed until it has been printed for five days in each house. A majority of each house shall at all times have power to take a bill from a committee. Immediate effect may be given only to acts making appropriations and acts necessary for the public peace, health and safety.

In other respects the substantive powers of the legislature are enlarged. The work of reforestation is distinctly authorized. The power to regulate express rates is conferred; and the power to regulate freight and express rates may be delegated to a commission. The power to regulate the hours and conditions under which women and children may be employed is specifically mentioned. Power to create additional courts and to establish a system of circulating judges is also conferred.

The veto power of the governor is extended to apply to items of appropriation bills; and the governor's authority to require information from all executive and administrative state offices is more distinctly asserted. The salaries of the members of the legislature and elective state officials have been increased to a moderate degree, from the absurdly low figures established in 1850.

Women taxpayers are authorized to vote on questions which involve

the direct expenditure of money or the issue of bonds, and on the grant of franchises and the acquirement of public utilities in cities and villages.

Several important changes are made in the provisions on finance and taxation. The state board of assessors will assess not only railroads, but also the property of express, telegraph, telephone and other transportation companies. At the same time the power to impose specific taxes permits certain classes of property to be taxed differently from the uniform *ad valorem* basis, allowing for example, a specific mortgage tax. Another section prohibits the surrender or suspension of the power of taxation by any grant or contract made by the state or any municipal corporation. The prohibition on internal improvements has been modified so as to permit of reforestation and municipal ownership of public utilities, in addition to the former exceptions as to wagon roads and the expenditure of grants made to the state. Disclosures as to the state treasury led to restrictions on the deposit of state funds in banks. Another section provides that uniform systems of accounting shall be established for all similar state officials, boards and institutions and county officials, for the audit of such accounts, and for uniform reports of all public accounts.

Some minor changes have been made in the article on education in regard to primary schools; and the board of trustees for the state agricultural college is made a constitutional body, similar to the regents of the state university. Some minor changes were also made in the provisions as to banking laws and corporations; and the provisions in regard to the power of eminent domain were brought together in one article.

In the Michigan Constitution of 1850 the provisions usually found in the declaration of rights were scattered through various articles of the constitution. These have again been brought together in one article, as is done in all the other state constitutions.

Forty sections of the former constitution were eliminated from the revision as obsolete, objectionable or inapplicable to existing conditions. The eliminations amount to as much as the new matter inserted; so that the revised constitution is substantially the same length as the previous document.

Besides the changes adopted, many others were proposed and given more or less consideration. More than 400 proposals were presented; and while these included a good number of separate pro-

posals on the same subject, the large proportion of those offered failed of adoption. Among the more important may be noted those providing for direct legislation, minority representation in the legislature, the merit system in appointments, a budget of appropriations, central boards of control for allied state institutions, a public utilities commission, state insurance, prohibition of the liquor traffic and the sale of cigarettes, the eight hour day, trial of contempt cases, contributory negligence and the abolition of the fellow servant rule in certain classes of accident cases.

Some of these might well have been placed in the Constitution. Others deal with subjects on which legislation seems to be needed; but they were omitted as not properly within the scope of the Constitution.

Summarizing the revised Constitution as a whole, it can safely be said that it includes all that was valuable in the former instrument; that it eliminates a good deal that was no longer serviceable; and that it includes many new provisions, practically all of which are distinct improvements and make the fundamental law of Michigan much better adapted to the needs and conditions of the present. And it is a document well worth the study of those in other states interested in the amendment or revision of their state constitutions.

A consideration of these changes in state constitutions offers some suggestions in regard to proposed changes in the national constitution. In the first place, the increasing frequency of alterations in state constitutions must tend to weaken the idea that the Constitution of the United States is something sacrosanct and unchangeable; and will prepare the way for the amendment or revision of the national document. At the same time, however, the contrast between the frequency of changes in the two groups of Middle-west states shows that a difficult formal process of amendment imposes a serious obstacle to the adoption of changes. In the long run, public opinion may express itself; but under the cumbersome process provided in the national constitution action by means of individual amendments is likely to be unduly delayed. Under these conditions, the practice of the states in carrying out general revisions of their constitutions is bound to suggest the idea of a new national convention to undertake a general revision of the national constitution. When such a convention is held—and it may come sooner than now seems probable—there need be little fear of the abolition of the federal system or of any other radical revolution in our political system; but as in the

case of the revision of the Michigan Constitution many moderate changes can be made to adapt the national instrument to present-day conditions.